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In re Application

Knowles, et al.

Application No. 09/615,294

Filed: July 13, 2000

Dkt. No.: A-68944

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: OFFICE OF PETITIONS  
: PATENT TERM ADJUSTMENT  
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This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT," filed June 26, 2008. This matter is being properly treated as an application for patent term adjustment pursuant to 37 CFR 1.705(b).

The application for patent term adjustment (PTA) under 37 CFR 1.705(b) is **GRANTED IN PART and HELD IN ABEYANCE IN PART.**

The Determination of Patent Term Adjustment under 35 U.S.C. 154(b), mailed June 11, 2008, indicated a patent term adjustment (PTA) to date of 179 days. The instant application for PTA was timely filed June 26, 2008, prior to issue fee payment. Applicants argue that the application is entitled to an adjustment of 1,601 days.

The correct adjustment at the time of allowance is 1,410 days, as discussed herein.

Applicants argue that the adjustment was improperly reduced 39 days in connection with the reply filed January 22, 2002. Applicants argue that a reply to the non-final Office action mailed September 14, 2001 was timely filed December 14, 2001. Applicants argue that the reply bears a certificate of mailing date of December 14, 2001.

Applicants argument has been carefully considered, but is not found convincing. In accordance with 37 CFR 1.703(f), the date indicated on any certificate of mailing or transmission under § 1.8 shall not be taken into account in this calculation. Accordingly, the reduction of 39 days will not be withdrawn.

As undisputed, the application is entitled to an adjustment of eight days in accordance with 37 CFR 1.702(a)(2) in connection with the mailing of the final Office action on May 30, 2002.

As undisputed by applicants, the adjustment is properly reduced four days in accordance with 37 CFR 1.704(b) in connection with the request for continued examination filed September 3, 2002.

Applicants argue that the adjustment was improperly reduced 454 days in connection with the reply to the non-final Office action mailed November 18, 2002.

A review of the record reveals that the reply to the non-final Office action mailed November 18, 2002 was received February 24, 2003.

In view thereof, the proper reduction in this regard under 37 CFR 1.704(b) is six days. The reduction commenced February 19, 2003, the day after the date that is three months after the date that the non-final Office action was mailed, and ended February 24, 2003, the date that the reply was filed.

Applicants further argue that the application is entitled to an adjustment of 346 days in connection with the mailing of an Office on May 28, 2004.

A review of the record does not reveal that an Office communication was mailed May 28, 2004. An Office action was mailed August 11, 2004. Thus, the application is entitled to an adjustment of 414 days in accordance with 37 CFR 1.702(a)(2). The adjustment commenced June 25, 2003, the day after the date that is four months after the date of reply dated February 24, 2003, and ended August 11, 2004, the date that the Office action was mailed. *See*, 37 CFR 1.703(a)(2).

A review of the record reveals that the Office errantly accorded an adjustment of 61 days in connection with the mailing of the examiner's answer on February 23, 2006. A compliant appeal brief was filed December 13, 2005. Therefore, the examiner's answer was timely mailed within the meaning of 37 CFR 1.703(a)(4). Thus, the adjustment of 61 days has been removed.

Applicants do not contest the reduction of 24 days under 37 CFR 1.704(b) in connection with the appeal brief filed December 5, 2006.

Applicants contest the adjustment of 631 days in connection with the Board decision mailed May 19, 2008. Applicants argue that the correct adjustment in this regard is 1,061 days.

A review of the record reveals that the Board decision mailed May 19, 2008 reversed the examiner. Thus, in accordance with 37 CFR 1.702(e), the application is entitled to an adjustment of 1,061 days, as argued. The adjustment commenced June 24, 2005, the date that Notice of Appeal was filed, and ended May 19, 2008, the date that the Board decision reversing the examiner was mailed. *See*, 37 CFR 1.702(e).

In view thereof, at the time of allowance, the application was entitled to an adjustment of 1,410 days (adjustments totalling 1,483 days less reductions totalling 73 days).

The instant application for patent term adjustment also requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within three years of the filing date of the application. A decision is being **held in abeyance** until after the actual patent date. Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term for Office failure to issue the patent within three years. *See*, 37 CFR 1.703(b).

Applicants are given **TWO (2) MONTHS** from the issue date of the patent to file a written request for reconsideration of the patent term adjustment for Office failure to issue the patent

within three years. A copy of this decision should accompany the request. Applicants may seek such consideration without payment of an additional fee. However, as to all other bases for seeking reconsideration of the patent term adjustment indicated in the patent, all requirements of 37 CFR 1.705(d) must be met. Requests for reconsideration on other bases must be timely filed and must include payment of the required fee.

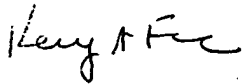
With respect to the over 3 year calculation, rather than file the request for reconsideration of Patent Term Adjustment at the time of the mailing of the notice of allowance, applicants are advised that they may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term pursuant to 37 CFR 1.705(d). The USPTO notes that it does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent and accordingly, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent.

Applicants are further advised that the patent term adjustment indicated in the patent will include any additional patent term accrued pursuant to §§ 1.702(a)(4) and 1.702(b).

The required patent term adjustment application fee of \$200.00 has been charged to applicants' deposit account, as authorized. No additional fee will be required if applicants are solely requesting reconsideration of additional time related to failing to issue the patent within three years in accordance with 37 CFR 1.702(b).

The application file is being forwarded to the Office of Data Management for issuance of the patent. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

Telephone inquiries specific to this matter should be directed to Petitions Attorney Alesia M. Brown at (571) 272-3205.



Kery Fries  
Senior Legal Advisor  
Office of Patent Legal Administration  
Office of Deputy Commissioner  
for Patent Examination Policy

Day : Monday  
Date: 3/23/2009 **PALM INTRANET**

Time: 16:11:37

**PTA Calculations for Application: 09/615294**

Application Filing Date:	07/13/2000	PTO Delay (PTO):	700
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	521
Post-Issue Petitions:	0	Total PTA (days):	1410
PTO Delay Adjustment:	1231		

**File Contents History**

Number	Date	Contents Description	PTO	APPL	START
133	03/23/2009	ADJUSTMENT OF PTA CALCULATION BY PTO	1231		
120	06/11/2008	MAIL NOTICE OF ALLOWANCE			
119	06/09/2008	ISSUE REVISION COMPLETED			
118	06/09/2008	DOCUMENT VERIFICATION			
117	06/09/2008	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
116	06/09/2008	CASE DOCKETED TO EXAMINER IN GAU			
115	06/03/2008	NOTICE OF ALLOWABILITY			
110	05/19/2008	MAIL BPAI DECISION ON APPEAL - REVERSED	631		82
109	05/19/2008	BPAI DECISION - EXAMINER REVERSED			
107	11/08/2007	DOCKETING NOTICE MAILED TO APPELLANT			
106	11/08/2007	ASSIGNMENT OF APPEAL NUMBER			
105	08/27/2007	APPEAL AWAITING BPAI DOCKETING			
104	08/15/2007	MAIL REPLY BRIEF NOTED BY EXAMINER			
103	08/13/2007	REPLY BRIEF NOTED BY EXAMINER			
102	06/19/2007	DATE FORWARDED TO EXAMINER			
101	05/15/2007	REPLY BRIEF FILED			
100	05/10/2007	EXAM. ANS. REVIEW COMPLETE			
99	03/15/2007	MAIL SUPPLEMENTAL EXAMINER'S ANSWER			
98	03/14/2007	2ND OR SUBSEQUENT EXAMINER'S ANSWER TO APPEAL BRIEF			
97	01/10/2007	APPEAL BRIEF REVIEW COMPLETE			
96	01/10/2007	DATE FORWARDED TO EXAMINER			
95	12/05/2006	APPEAL BRIEF FILED		24	78
85	11/28/2006	NOTICE -- DEFECTIVE APPEAL BRIEF			
84	09/12/2006	DATE FORWARDED TO EXAMINER			

83.1	08/28/2006	DEFECTIVE / INCOMPLETE APPEAL BRIEF FILED			
83	08/28/2006	APPEAL BRIEF FILED			
82	08/28/2006	NOTICE OF APPEAL FILED			
78	08/11/2006	MAIL POST-EXAMINER ANS. COM			
77	08/09/2006	POST-EXAMINER ANS. COM			
67	07/26/2006	ORDER RETURNING UNDOCKETED APPEAL TO THE EXAMINER			
66	07/20/2006	APPEAL AWAITING BPAI DOCKETING			
65	07/17/2006	MAIL REPLY BRIEF NOTED BY EXAMINER			
64	07/10/2006	REPLY BRIEF NOTED BY EXAMINER			
63	04/28/2006	DATE FORWARDED TO EXAMINER			
62	04/24/2006	REPLY BRIEF FILED			
61	02/23/2006	MAIL EXAMINER'S ANSWER	61		55
60	02/21/2006	EXAMINER'S ANSWER TO APPEAL BRIEF			
59	12/15/2005	DATE FORWARDED TO EXAMINER			
58	12/13/2005	APPEAL BRIEF FILED			
57	11/16/2005	NOTICE -- DEFECTIVE APPEAL BRIEF			
56	08/30/2005	DATE FORWARDED TO EXAMINER			
55.1	08/24/2005	DEFECTIVE / INCOMPLETE APPEAL BRIEF FILED			
55	08/24/2005	APPEAL BRIEF FILED			
54	07/19/2005	MAIL ADVISORY ACTION (PTOL - 303)			
53	07/13/2005	ADVISORY ACTION (PTOL-303)			
52	07/07/2005	DATE FORWARDED TO EXAMINER			
51	06/24/2005	AMENDMENT/ARGUMENT AFTER NOTICE OF APPEAL			
50	06/24/2005	NOTICE OF APPEAL FILED			
49	07/05/2005	DATE FORWARDED TO EXAMINER			
48	06/24/2005	AMENDMENT AFTER FINAL REJECTION			
47	06/15/2005	MAIL FINAL REJECTION (PTOL - 326)			
46	06/13/2005	FINAL REJECTION			
45	04/05/2005	DATE FORWARDED TO EXAMINER			
44	03/17/2005	RESPONSE AFTER NON-FINAL ACTION			
43	01/18/2005	REFERENCE CAPTURE ON IDS			
42.7	01/18/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
42	01/18/2005	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			

41	12/17/2004	MAIL NON-FINAL REJECTION			
40	12/13/2004	NON-FINAL REJECTION			
39	09/23/2004	DATE FORWARDED TO EXAMINER			
38	08/17/2004	RESPONSE AFTER EX PARTE QUAYLE ACTION			
37	09/21/2004	CORRESPONDENCE ADDRESS CHANGE			
36	08/17/2004	WORKFLOW INCOMING AMENDMENT IFW			
35	08/11/2004	MAIL EX PARTE QUAYLE ACTION (PTOL - 326)			
34	08/09/2004	EX PARTE QUAYLE ACTION			
33	06/01/2004	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
32	06/01/2004	DATE FORWARDED TO EXAMINER			
31	05/17/2004	RESPONSE AFTER NON-FINAL ACTION		454	27
30	04/19/2004	MISCELLANEOUS INCOMING LETTER			
29	05/27/2004	CORRESPONDENCE ADDRESS CHANGE			
28	05/17/2004	WORKFLOW INCOMING AMENDMENT IFW			
27	11/18/2002	MAIL NON-FINAL REJECTION			
26	11/18/2002	NON-FINAL REJECTION			
25	09/12/2002	DATE FORWARDED TO EXAMINER			
24	09/03/2002	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
23	09/12/2002	DATE FORWARDED TO EXAMINER			
22	09/03/2002	REQUEST FOR CONTINUED EXAMINATION (RCE)		4	19
21	09/12/2002	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
20	09/03/2002	WORKFLOW - REQUEST FOR RCE - BEGIN			
19	05/30/2002	MAIL FINAL REJECTION (PTOL - 326)	8		16
18	05/28/2002	FINAL REJECTION			
17	03/06/2002	DATE FORWARDED TO EXAMINER			
16	01/22/2002	RESPONSE AFTER NON-FINAL ACTION		39	14
15	11/06/2001	CASE DOCKETED TO EXAMINER IN GAU			
14	09/14/2001	MAIL NON-FINAL REJECTION			
13	09/10/2001	NON-FINAL REJECTION			
12	06/04/2001	CASE DOCKETED TO EXAMINER IN GAU			
11	07/19/2001	CASE DOCKETED TO EXAMINER IN GAU			
10	07/06/2001	DATE FORWARDED TO EXAMINER			
9	06/29/2001	RESPONSE TO ELECTION / RESTRICTION FILED			
8	06/05/2001	MAIL RESTRICTION REQUIREMENT			

7	06/04/2001	REQUIREMENT FOR RESTRICTION / ELECTION			
6.7	10/10/2000	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
6	10/10/2000	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
5	10/13/2000	CASE DOCKETED TO EXAMINER IN GAU			
4	10/04/2000	APPLICATION DISPATCHED FROM OIPE			
3	08/25/2000	CORRESPONDENCE ADDRESS CHANGE			
2	08/07/2000	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	07/13/2000	INITIAL EXAM TEAM NN			

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### EXPLANATION OF PTA CALCULATION

### EXPLANATION OF PTE CALCULATION

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